

³ The Board notes that, following the January 23, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability from work for the periods February 16 to March 15, 2019 and April 13 to May 10, 2019 causally related to the accepted July 18, 2016 employment injury.

FACTUAL HISTORY

On July 25, 2016 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 18, 2016 she sustained left shoulder pain when she lifted and carried a large heavy parcel to a customer's door in the performance of duty. She stopped work on July 25, 2016.

Appellant accepted an offer of modified assignment (limited duty) on July 30, 2016 that included lifting up to 10 pounds with the right arm and 5 pounds with the left arm with assistance, simple grasping, and standing, for up to four hours per day. She again stopped work on or around September 10, 2016. Appellant underwent surgery on December 1, 2016 for arthroscopic rotator cuff repair and left shoulder subacromial decompression. After initial development and denial of the claim, on November 15, 2018 OWCP accepted the claim for a left shoulder rotator cuff tear or rupture. It paid appellant wage-loss compensation on the supplemental rolls from September 16, 2016 to February 15, 2019, from March 16 to April 12, 2019, and from May 11, 2019 to March 28, 2020, and on the periodic rolls from March 29, 2020 and continuing.

In a note dated March 28, 2017, Dr. Stephen Hanff, a Board-certified orthopedic surgeon, related that appellant was unable to physically lift 70 pounds and that a functional capacity evaluation (FCE) was required.

In an FCE dated June 1, 2017, Dr. Hanff found that appellant was capable of full-time light duty with restrictions of lifting 18 pounds occasionally and 10 pounds frequently knee to waist and with two-handed carrying up to 30 feet. Appellant was capable of lifting 13 pounds occasionally and 8 pounds frequently waist to shoulder and waist to overhead. With regard to positional tolerances, appellant was able to frequently bend, squat, stair climb, reach forward left, and reach overhead bilaterally, while she was able to occasionally kneel, balance bilaterally, and crawl. She was able to perform all measured tasks involving handling capacity and foot controls frequently.

On March 13, 2019 OWCP referred appellant for a second opinion examination with Dr. Patrick Horan, a Board-certified orthopedic surgeon, to assess her employment-related conditions and disability status. It requested that he opine as to whether she could return to her date-of-injury position.

On March 22, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work during the period February 16 through March 15, 2019.

In a letter dated March 25, 2019, OWCP advised appellant that it had received her Form CA-7 claiming wage-loss compensation from February 16 to March 15, 2019. It requested that she provide medical evidence establishing disability during the period claimed. OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated April 10, 2019, Dr. Horan reviewed a statement of accepted facts (SOAF) and appellant's medical records. Appellant's significant other, who attended the evaluation, informed him that she had recently been diagnosed with Alzheimer's disease. Dr. Horan related her left shoulder physical examination findings. He diagnosed status post rotator cuff repair. Dr. Horan opined that appellant's left rotator cuff tear had not resolved as she continued to experience persistent pain and restricted range of motion. He indicated that she was unable to return to her date-of-injury position, noting that she had a limit of 18 pounds as determined by the June 1, 2017 FCE. Dr. Horan further opined that it was unlikely appellant could participate in vocational rehabilitation because of her Alzheimer's disease and shoulder. He noted that she had not reached maximum medical improvement (MMI) and that she required a new magnetic resonance imaging (MRI) study for her rotator cuff.

On May 29, 2019 appellant filed a Form CA-7 claiming compensation for disability from work for the period April 13 to May 10, 2019.

In a development letter dated June 3, 2019, OWCP noted that no medical evidence had been received since February 27, 2017. It advised that appellant should submit medical evidence establishing disability during the entire period claimed. OWCP afforded her 30 days to submit the requested information. No additional evidence was received.

By decision dated June 4, 2019, OWCP denied appellant's claim for wage-loss compensation for the period February 16 to March 15, 2019. It found that the medical evidence of record failed to support disability during the period claimed, as it had not received a response to its development letter of June 3, 2019.

In a letter dated June 14, 2019, appellant's representative noted that Dr. Horan's April 10, 2019 report supported payment of wage-loss compensation benefits from September 10, 2016 through the present and continuing. He noted that the employing establishment had not offered modified-duty consistent with appellant's medical restrictions because the claim had previously been denied.

By decision dated July 8, 2019, OWCP denied appellant's claim for wage-loss compensation for the period April 13 to May 10, 2019. It found that the medical evidence of record failed to support disability during the period claimed, as it had not received a response to its development letter of June 3, 2019.

In a report dated May 8, 2019, Dr. Robert R. Reppy, a family medicine specialist, examined appellant for complaints of left shoulder pain. He noted that her original injury occurred when she twisted in the driver's seat of her mail truck to lift a heavy package from the back and felt immediate pain. Dr. Reppy related physical examination findings regarding appellant's left shoulder and noted that she was unable to carry groceries or lift a laundry basket. He diagnosed left shoulder rotator cuff tear/rupture and Alzheimer's disease.

In a letter dated August 15, 2019, appellant's representative noted that Dr. Horan's April 10, 2019 report related that appellant was unable to perform her date-of-injury position and supported payment of wage-loss compensation from September 10, 2016 through the present and continuing. He further noted that Dr. Reppy's report of May 8, 2019 indicated that she was unable to carry groceries or lift a laundry basket. Appellant's representative stated that no modified duty had been offered because appellant's claim had previously been denied.

In reports dated November 27, 2018 and February 6 and July 17, 2019, Dr. Katherine Standley, a Board-certified neurologist, diagnosed appellant with Alzheimer's disease and discussed her treatment and prognosis. In the July 17, 2019 report, Dr. Standley advised that appellant was unable to drive.

In a letter dated August 31, 2019, appellant's representative requested that OWCP pay appellant's wage-loss compensation claims. He again noted that Dr. Horan concurred with Dr. Hanff's FCE findings and that she was disabled due to her accepted conditions from performing her date-of-injury position. Counsel further noted that Dr. Standley had indicated that appellant could not drive and that appellant's date-of-injury position involved driving.

In a report dated September 24, 2019, Dr. Reppy examined appellant for complaints of left shoulder pain. He stated that she had reached MMI as of that date. Dr. Reppy diagnosed left shoulder rotator cuff tear/rupture and Alzheimer's disease.

On October 15, 2019 OWCP requested that Dr. Reppy provide further information regarding appellant's work status and work restrictions.

On November 2, 2019 appellant, through her representative, requested reconsideration of OWCP's June 4 and July 8, 2019 decisions. With the request, appellant's representative attached a letter explaining that Dr. Reppy's October 23, 2019 and Dr. Horan's April 10, 2019 reports supported that she was unable to perform her date-of-injury position and that there was no modified-duty offered because the claim had previously been denied. He requested payment of wage-loss compensation benefits from September 10, 2016 through the present.

In his October 23, 2019, Dr. Reppy indicated that, since September 10, 2016, appellant would not have been capable of performing the physical functions of her date-of-injury position as rural route carrier because she would have had very limited ability to utilize the left upper extremity for repetitive use of sorting and delivering mail and she did not have the strength required to lift and carry packages. Furthermore, she would not have been capable of safely operating a motor vehicle. Dr. Reppy stated that these remained the current restrictions as appellant's MRI scan revealed that her left shoulder condition had not resolved. The May 20, 2019 MRI scan was attached, which demonstrated a persistent mild articular surface tear of the supraspinatus tendon laterally and a partial thickness tear of the subscapularis tendon superiorly and laterally and associated medial displacement of the long head of the biceps tendon superiorly.

In a report dated November 5, 2019, Dr. Reppy responded to OWCP's October 15, 2019 letter. He diagnosed left rotator cuff tear/rupture and Alzheimer's disease. Dr. Reppy reiterated his physical findings of May 8, 2019. He noted that appellant's FCE indicated that she was able to lift 8 to 12 pounds, but that the position of letter carrier required a lifting capacity of 70 pounds. Dr. Reppy observed that appellant's rotator cuff tear was seen on MRI scan. He opined that the original injury occurred when she twisted to lift a heavy package from the back of her postal vehicle. Dr. Reppy explained that lifting from behind the seat put her in a disadvantaged position in terms of leverage and that the weight of the package exceeded the strength of her deltoid and supraspinatus muscles, resulting in a rotator cuff tear. He noted that because the tear was not attended to in a timely fashion, scar tissue formed along the edges of the tear, preventing spontaneous healing. Dr. Reppy opined that appellant's work-related condition had not resolved and that it required surgery. He stated that she was unable to return to work without restrictions because her job description called for the ability to lift up to 70 pounds and she could no longer

lift above 12 pounds. Dr. Reppy further noted that appellant's Alzheimer's disease made her ability to follow directions or remember how to do assignments problematic. He stated that she could not perform modified duties as it would be dangerous to both herself and her coworkers, and that her present level of disability was a direct result of her work-related conditions.

On December 4, 2019 OWCP referred appellant for a second opinion examination with Dr. Krishan K. Batra, a Board-certified psychiatrist, to assess appellant's employment-related conditions and disability status. It requested that he opine as to whether she could return to her date-of-injury position.

In a second opinion report dated January 2, 2020, Dr. Batra reviewed a SOAF and appellant's medical records. He diagnosed Alzheimer's dementia at a moderate level of impairment. Dr. Batra opined that due to her cognitive impairment, appellant was unable to return to her date-of-injury position and that vocational rehabilitation was a remote possibility as she was suffering from a neuropsychiatric condition of progressive and irreversible nature.

By decision dated January 23, 2020, OWCP denied modification of the decisions dated June 4 and July 8, 2019. It found that she had not submitted contemporaneous evidence establishing that she was unable to work for the claimed dates of disability.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the preponderance of the evidence.⁴ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁶

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁸

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is

⁴ See *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

⁵ *Id.*

⁶ 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 4; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁷ *Id.* at § 10.5(f); see *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁸ *Id.*

claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁹

ANALYSIS

The Board finds that appellant has established that she was totally disabled during the periods February 16 to March 15, 2019 and April 13 to May 10, 2019 causally related to the accepted employment injury.

The record reflects that OWCP accepted appellant's claim for left shoulder rotator cuff tear or rupture. OWCP has paid appellant wage-loss benefits continuously from September 16, 2016, except for the brief periods in question.

Appellant was examined by OWCP second opinion physician, Dr. Horan on April 10, 2019. Dr. Horan related her left shoulder physical examination findings and diagnosed status post rotator cuff repair. He opined that appellant's left rotator cuff tear had not resolved as she continued to experience persistent pain and restricted range of motion. Dr. Horan indicated that she was unable to return to her date-of-injury position, noting that she had a lifting limit of 18 pounds as determined by the June 1, 2017 FCE.

OWCP also received reports from appellant's treating physician, Dr. Reppy. On October 15, 2019 it requested that he further address her work status and work restrictions. In a report dated October 23, 2019, Dr. Reppy opined that, since September 10, 2016, appellant would not have been capable of performing the physical functions of her date-of-injury position as rural route carrier because she would have had very limited ability to utilize the left upper extremity for repetitive use of sorting and delivering mail and did not have the strength required to lift and carry packages. On November 5, 2019 he responded to OWCP's October 15, 2019 request and diagnosed left rotator cuff tear/rupture and Alzheimer's disease. Dr. Reppy opined that the original injury occurred when appellant twisted to lift a heavy package from the back of her postal vehicle. He explained that lifting from behind the seat put her in a disadvantaged position in terms of leverage and that the weight of the package exceeded the strength of her deltoid and supraspinatus muscles, resulting in a rotator cuff tear. Dr. Reppy noted review of appellant's May 10, 2019 MRI scan of the left shoulder and explained that because the tear was not attended to in a timely fashion, scar tissue formed along the edges of the tear, preventing spontaneous healing. He opined that her work-related condition had not resolved and that it required surgery. Dr. Reppy stated that appellant had been unable to return to work without restrictions because her job description called for the ability to lift 70 pounds and she could no longer lift more than 12 pounds.

Appellant has therefore established that she was disabled during the periods in question, with probative and reliable medical evidence.¹⁰

The Board finds that as appellant has established that she was disabled from February 16 to March 15, 2019 and April 13 to May 10, 2019 causally related to the accepted employment

⁹ A.W., Docket No. 18-0589 (issued May 14, 2019).

¹⁰ *Supra* note 6.

injury, upon return of the case record, OWCP shall authorize payment of wage-loss compensation for these periods and any attendant medical expenses.

CONCLUSION

The Board finds that appellant has established that she was disabled from February 16 to March 15, 2019 and April 13 to May 10, 2019 causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 26, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board